



FEDERAL ELECTION COMMISSION
WASHINGTON, D C 20463

July 21, 2000

Duane B. Starkey
1115 Coventry Lane
Duncanville, TX 75137

RE: MUR 4978
Mac Warren for Congress and
Duane B. Starkey, as Treasurer

Dear Mr. Starkey:

On July 18, 2000, the Federal Election Commission found that there is reason to believe Mac Warren for Congress and you, as treasurer, violated 2 U.S.C. § 441d(a), a provision of the Federal Election Campaign Act of 1971, as amended ("the Act"). The Factual and Legal Analysis, which formed a basis for the Commission's finding, is attached for your information.

You may submit any factual or legal materials that you believe are relevant to the Commission's consideration of this matter. Please submit such materials to the General Counsel's Office within 15 days of your receipt of this letter. Where appropriate, statements should be submitted under oath. In the absence of additional information, the Commission may find probable cause to believe that a violation has occurred and proceed with conciliation.

In order to expedite the resolution of this matter, the Commission has also decided to offer to enter into negotiations directed towards reaching a conciliation agreement in settlement of this matter prior to a finding of probable cause to believe. Enclosed is a conciliation agreement that the Commission has approved.

If you are interested in expediting the resolution of this matter by pursuing preprobable cause conciliation, and if you agree with the provisions of the enclosed agreement, please sign and return the agreement, along with the civil penalty, to the Commission. In light of the fact that conciliation negotiations, prior to a finding of probable cause to believe, are limited to a maximum of 30 days, you should respond to this notification as soon as possible.

Requests for extensions of time will not be routinely granted. Requests must be made in writing at least five days prior to the due date of the response and specific good cause must be demonstrated. In addition, the Office of the General Counsel ordinarily will not give extensions beyond 20 days.

Duane B. Starkey, Treasurer

MUR 4978

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If you intend to be represented by counsel in this matter, please advise the Commission by completing the enclosed form stating the name, address, and telephone number of such counsel, and authorizing such counsel to receive any notifications and other communications from the Commission.

This matter will remain confidential in accordance with 2 U.S.C. §§ 437g(a)(4)(B) and 437g(a)(12)(A), unless you notify the Commission in writing that you wish the investigation to be made public.

For your information, we have attached a brief description of the Commission's procedures for handling possible violations of the Act. If you have any questions, please contact Jim Moye, the staff member assigned to this matter, at (202) 694-1650.

Sincerely,

A handwritten signature in dark ink, appearing to read "Darryl R. Wold". The signature is fluid and cursive, with the first name "Darryl" being more prominent than the last name "Wold".

Darryl R. Wold
Chairman

Enclosures

Factual and Legal Analysis

Procedures

Designation of Counsel Form

Conciliation Agreement

FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

RESPONDENTS: Mac Warren for Congress and MUR: 4978
Duane B. Starkey, as treasurer

I. GENERATION OF MATTER

This matter was generated by a complaint filed with the Federal Election Commission by Sarah Merrill on February 23, 2000. See 2 U.S.C. § 437g(a)(1).

II. FACTUAL AND LEGAL ANALYSIS

A. Applicable Law

The Federal Election Campaign Act of 1971, as amended ("the Act"), requires that all expenditures for communications which expressly advocate the election or defeat of a clearly identified candidate, or expenditures to solicit any contribution through any broadcasting station, newspaper, magazine, outdoor advertising facility, direct mailing, or any other type of general public political advertising, include a disclaimer. 2 U.S.C. § 441d(a). The disclaimer must clearly state the identity of the person or committee who paid for the communication and whether the communication was authorized by the candidate or the candidate's committee. *Id.*

According to 11 C.F.R. § 110.11(a)(1), the disclaimer shall be presented in a clear and conspicuous manner. A disclaimer need not appear on the front of the communication as long as it appears within the communication, except on communications such as billboards that only contain a front face. 11 C.F.R. § 110.11(a)(5)(i).

B. The Complaint

Complainant Sarah Merrill states in her complaint that she is a resident of the 24th Congressional District of Texas. According to the complainant, she “recently received information about a Republican Primary candidate.” She avers that she “was given two pieces of literature, one is a mailing brochure and the other is a card asking for a contribution.” The complainant continues by stating, “I am filing a complaint because I noticed there was no ‘paid for’ on them. I would like to know who is really funding this.”

The complainant attached to the complaint letter the two pieces of campaign literature she received. The first piece of literature is a tri-fold brochure which outlines Mac Warren’s professional qualifications, his stance on selected social issues, asks voters to “VOTE MAC WARREN IN THE REPUBLICAN PRIMARY MARCH 14TH!!!” and includes a quote from Mac Warren on the back cover which directly advocates his election.¹ There are no disclaimers on the brochure.

The second piece of literature appears to be a copy of a Mac Warren for Congress campaign contribution request card and envelope. The card states: “Yes, I’ll Help Elect Mac Warren Our Next Congressman for the 24th District.” The card goes on to give those interested the option of: “Volunteering my time at Headquarters,” “Putting a bumper sticker on my car/truck,” “Making get-out-the-vote phone calls,” “Putting a yard sign on my lawn,” “Distributing literature in my neighborhood,” “Working the polls on election day,” and making a donation of \$1,000, \$500, \$250, \$100, \$50 or other amount. The card also requests personal

¹ The quote on the back of the brochure states: “It is time for a change in Leadership for the 24th Congressional District. The citizens of our district have been overtaxed and over-regulated by the Federal Government for too long. We need a strong Conservative voice in Congress - someone who is dedicated to the principles of personal responsibility and limited government. With your support, I will fight hard to cut taxes, reduce government waste, and eliminate the Federal regulations that hinder prosperity and growth in our Community.”

information from contributors and clearly states that checks be made payable to Mac Warren for Congress. The envelope carries what appears to be a Mac Warren for Congress logo and the designated address for the campaign. Neither the contribution request card nor envelope carry disclaimers.

C. The Response

Duane B. Starkey, treasurer of the Mac Warren for Congress Committee, filed the Respondents' response on March 20, 2000 and attached thereto several invoices and disbursements. The response states that, "[t]he complainant, rightfully so, observed that there was no 'paid for' identifier on two pieces of literature, one a mailing brochure and the other a card asking for a contribution for our candidate's campaign."

The response continues that "[t]he lack of this identifier was an unintentional oversight on our part and occurred in our haste and inexperience to accomplish campaign objectives. We simply did not recognize that the identifier was missing." According to the response, neither the printers nor campaign personnel noticed the absence of the disclaimers and "this unintentional error was exacerbated by the use of a third party who stuffed and mailed the material."

The response further states that, "[i]n view of the complainant's request to know who is really funding our campaign and I presume, explicitly, who funded the brochure, the contribution request card, and the payment for mailing, I am enclosing several invoices and disbursements as exhibits showing that these expenditures were properly documented." The attachments include an invoice for the printing of the brochures totaling \$3,445.44; a credit card receipt for payment of the printing of the brochures; an invoice for the printing of 5,000 contribution request cards and envelopes totaling \$434.01; a copy of a campaign account check in the amount of \$434.01 used for payment of the printing of the contribution request cards and envelopes; a receipt from

the United States Postal Service for postage totaling \$1,089.00 for mailing the items; and a credit card receipt for payment of the postage. The response avers that all the disbursements had been "properly recorded in *FEC Reports of Receipts and Disbursements* filed electronically on January 6, 2000 and February 25, 2000."²

Therefore, there is reason to believe that Mac Warren for Congress and Duane B. Starkey, as treasurer, violated 2 U.S.C. § 441d(a).

² The Committee electronically filed its 1999 Year End Report on January 6, 2000 and its 2000 12 Day Pre-Primary Report on February 25, 2000. The disbursements in question do not appear to be encompassed in the 1999 Year End Report. The Committee's 2000 12 Day Pre-Primary and Amended 12 Day Pre-Primary Reports disclose disbursements to Creative Type & Graphics totaling \$3,445.44 on January 18, 2000; a disbursement to Vision Printing, Inc. for 5,000 envelopes for donations and 5,000 donation cards totaling \$434.01 on January 18, 2000; and a disbursement to the United States Postal Service totaling \$1,089.00 on February 17, 2000.